

Exhibit 34

1
IN THE UNITED STATES DISTRICT COURT
2
FOR THE DISTRICT OF DELAWARE

3 Civil Action No. C.A. No. 04-1494 (JJF)

4 MAGTEN ASSET MANAGEMENT CORPORATION and
5 LAW DEBENTURE TRUST COMPANY OF NEW YORK,
Plaintiffs,

6 v.

7 NORTHWESTERN CORPORATION,
8 Defendant.

9
10 Civil Action No. C.A. No. 05-499 (JJF)

11 MAGTEN ASSET MANAGEMENT CORP.,
12 Plaintiff,

13 v.

14 MICHAEL J. HANSON and ERNIE J. KINDT,
15 Defendants.

16
17 DEPOSITION OF

18 MICHAEL J. HANSON

19
20
21
22
23
24
25 TAKEN ON: 6/27/2007

BY: DANA ANDERSON

<p>1 Q. At the time you signed those 2 officer's certificates, did you review the 3 indenture?</p> <p>4 A. I reviewed portions of the 5 indenture, not necessarily the whole 6 document.</p> <p>7 Q. So you may have seen portions 8 of a -- excerpted portions of an indenture 9 that was identified to you as relating to 10 the QUIPS?</p> <p>11 A. Just to be clear, I don't have 12 a recollection of specifically signing 13 officer's certificates related to the QUIPS. 14 But I do and have at times signed officer's 15 certificates, and when I did, I would review 16 those portions of the indenture documents to 17 make sure that I understood what I was 18 certifying to.</p> <p>19 Q. Okay. We'll get to that then.</p> <p>20 Let's talk about the business 21 structure of NorthWestern and the manner in 22 which the QUIPS were held just so that as 23 the deposition's going on, you and I can 24 talk about the same thing.</p> <p>25 Now, at the time that</p>	<p>1 assets and liabilities were those of the 2 LLC, we didn't acquire the assets directly, 3 we acquired the unit interest. And at that 4 time we made an application for approval 5 with the Montana Public Service Commission 6 to acquire the LLC and hold it either as a 7 subsidiary of NorthWestern or a division of 8 NorthWestern.</p> <p>9 (Deposition Exhibit Number 2 10 marked for identification.)</p> <p>11 BY MS. STEINGART:</p> <p>12 Q. I'd like to show you what we've 13 marked as Hanson 2 and ask you whether you 14 recognize that as a copy of the application 15 with one of the exhibits to that 16 application excerpted on the back.</p> <p>17 MR. KALECZYC: Are you 18 representing, Bonnie, that this is not the 19 complete application with all exhibits?</p> <p>20 MS. STEINGART: All these exhibits 21 are not exact, only one of the 22 exhibits -- it's a copy of the body of the 23 application with a single exhibit in the 24 interest of not deforesting America because 25 that was the one exhibit we were interested</p>
<p>Page 15</p> <p>1 NorthWestern was in the process of 2 acquiring the Montana Power Company assets 3 it submitted an application to the Montana 4 Public Service Commission, correct?</p> <p>5 MS. DELANEY: Just so the record 6 is clear, Bonnie, I believe the witness has 7 already testified what was acquired was the 8 Montana Power, LLC which had within it assets 9 and liabilities associated with the Montana 10 utility business.</p> <p>11 THE WITNESS: If we might describe 12 the acquisition itself, it may clarify so we 13 can move forward.</p> <p>14 BY MS. STEINGART:</p> <p>15 Q. I'm just asking you a specific 16 question about an application to the 17 regulators. So at the time that 18 the -- that NorthWestern acquired the 19 Montana Power Company, LLC, NorthWestern 20 made an application for permission to do 21 that with the Montana Public Service 22 Commission, correct?</p> <p>23 A. Just to be clear, what we 24 acquired was the unit interest or equity 25 ownership of the Montana Power, LLC, the</p>	<p>Page 17</p> <p>1 in.</p> <p>2 THE WITNESS: It does appear to be 3 a copy of the application, there are some 4 number of attachments here, couple of 5 verification statements and then two 6 organizational charts.</p> <p>7 BY MS. STEINGART:</p> <p>8 Q. These were -- so this was a 9 joint application by both NorthWestern and 10 the Montana Power Company, correct?</p> <p>11 A. Yes, it was.</p> <p>12 Q. And the charts that we have 13 attached were identified in the application 14 as Exhibit Number 7, correct?</p> <p>15 A. I don't recall that 16 specifically, it's labeled Exhibit 7 here.</p> <p>17 Q. Right. So what I was -- wanted 18 to do was to walk through what the 19 structure was before and after. Now, is 20 the document that's the first page of 21 Exhibit 7, and that's NOR 44694, a 22 depiction of the corporate structure before 23 that acquisition occurred?</p> <p>24 A. I don't believe so. And the 25 reason it has a box on the right that shows</p>

<p style="text-align: right;">Page 22</p> <p>1 (indicating), off of what you have here. 2 So that to the extent that NorthWestern had 3 options about how to hold the company after 4 this acquisition, you could tell me which 5 option or which structure the company 6 determined to have.</p> <p>7 MR. KALECZYC: You are not asking 8 the witness to testify about the accuracy of 9 the rest of the chart as it's depicted?</p> <p>10 MS. STEINGART: Well, the rest of 11 the chart is a copy of the chart that's here. 12 BY MS. STEINGART: 13 Q. I'm not asking you to compare 14 it box for box. It's a copy of the chart 15 that is listed in the Hanson Exhibit 2 16 except for the Montana Power, LLC. 17 A. To get to your question, the 18 chart and the one you copied it from, each 19 of the boxes are not separate corporations. 20 There is a mixture here of corporations and 21 divisions. But with that said, your 22 question is: How was NorthWestern Energy, 23 LLC formerly Montana Power held? It was a 24 direct subsidiary of NorthWestern 25 Corporation upon closing.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Right. 2 A. I do something like that. I've 3 just drawn a line directly from that box to 4 the line below NorthWestern Corporation. 5 Q. We'll mark something without 6 the line as 3 and we'll mark this as 3-A, 7 okay? So I'm marking this as 3-A. 8 (Deposition Exhibit Number 3-A 9 marked for identification.) 10 BY MS. STEINGART: 11 Q. So we'll have both as 12 deposition exhibits. 13 Now, during the period from 14 February 15th and before November 2002 when 15 the going-flat transaction occurred, did 16 that structure by which NorthWestern held 17 the Montana Power, LLC change, the 18 structure you've depicted here 19 (indicating)? 20 A. Between the time of closing and 21 the transaction in November, to my 22 recollection today, the legal structure did 23 not change. The management structure did, 24 but the legal structure did not, other than 25 changing the name to NorthWestern Energy,</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. So on February 15th Montana 2 Power, LLC with that name was a direct sub 3 of NorthWestern Corporation? 4 A. That's correct. 5 Q. So there would just be a 6 straight line. Could you depict that in 7 whatever place you think it belongs? Do 8 you have a pen? I can give you a pen. 9 A. You can draw the line any 10 direction you like as long as it connects 11 directly to this line below NorthWestern 12 Corporation. 13 Q. Could you draw a line that you 14 think is correct? 15 A. I can draw a line. Where 16 you've positioned it on the page it doesn't 17 make it easy to -- 18 Q. You can cross the line. 19 A. Okay. 20 Q. It's in here, it's not like the 21 Ghostbuster's thing where you can't cross 22 the streams. 23 A. (Complies.) Okay. It's 24 understood that crossing the line has no 25 meaning.</p>	<p style="text-align: right;">Page 25</p> <p>1 LLC that I recall. 2 Q. One of the things that changed 3 is between February 15, 2002 and November 4 of 2002, the name was changed from Montana 5 Power, LLC to NorthWestern Energy, LLC? 6 A. That's right. 7 Q. When you say that the structure 8 didn't change but management changed, can 9 you describe that to me? 10 A. Yes. The chart that you have, 11 again, is depicting a legal ownership 12 structure of sorts, although I'd point out 13 that NorthWestern Public Service at no time 14 was a separate subsidiary of NorthWestern 15 Corporation, it was always a division of and 16 part of the same corporation. 17 Q. Right. I would just note that 18 the box here says "division." 19 A. That's correct. The management 20 structure, looking at that chart, as myself 21 as the president and CEO of NorthWestern 22 Public Service Division, the box next to it, 23 NorthWestern Services Group, and then CEO 24 initially but not president of then the 25 Montana Power, LLC. Over time the</p>

<p style="text-align: right;">Page 26</p> <p>1 then-president Jack Haffey retired as did a 2 number of other executives of the Montana 3 Power, LLC and we integrated the management 4 between the Montana utility and the South 5 Dakota/Nebraska utility.</p> <p>6 Q. So from a management point of 7 view, would we know, looking at the chart 8 that's, let's say 3, the chart without the 9 line, from a management point of view, 10 would there be a line from Montana Energy, 11 LLC to NorthWestern Public Service?</p> <p>12 MR. KALECZYC: Objection to vague. 13 THE WITNESS: Not in a sense of 14 one reporting to. The easiest way that I know 15 of to describe that is that everything to the 16 right, NorthWestern Services Group, 17 NorthWestern Public Service and the -- excuse 18 me, NorthWestern Energy, LLC over time as 19 retirements went the senior executives in 20 charge of that group managed all of those 21 utility properties.</p> <p>22 BY MS. STEINGART: 23 Q. So they managed those utility 24 properties as if they were all in one box, 25 more or less, there wasn't a hierarchy?</p>	<p style="text-align: right;">Page 28</p> <p>1 A. That's right. 2 Q. Though in terms of management 3 and reporting, NorthWestern Energy, LLC was 4 managed and reported through NorthWestern 5 Services Group?</p> <p>6 MS. DELANEY: Objection. 7 THE WITNESS: No. NorthWestern 8 Services Group is the consolidation of what at 9 one time were separate non-utility 10 subsidiaries in the Midwest area, 11 communications, natural gas, marketing 12 function and appliance repair and the like. 13 They were at one time separate subsidiaries of 14 NorthWestern, they were combined of what was 15 called NorthWestern Services Group. I had the 16 executive management responsibility of that, 17 all though each one of those segments had its 18 own CEO if you will. Of the utility 19 NorthWestern Public Service upon closing we 20 had separate management other than myself, and 21 over the course of time as each change was 22 made, we had integrated management sometime 23 over the year follow closing.</p> <p>24 BY MS. STEINGART: 25 Q. So if I understand it,</p>
<p style="text-align: right;">Page 27</p> <p>1 MS. DELANEY: Objection. 2 THE WITNESS: I'm not sure what 3 you mean by "hierarchy." What I was trying to 4 say is upon closing we had a complete 5 complement of senior management at the Montana 6 utility, Jack Haffey and several others, I was 7 named CEO, we had a president, quite a number 8 of them chose to retire at different stages 9 along the way. So between the closing and 10 November of 2002 as they retired, we would 11 combine the management responsibilities with 12 their counterparts in South Dakota or in 13 reverse where we named someone in charge of a 14 function in Montana would then assume that 15 responsibility across the other two states as 16 well, we integrated the management. I don't 17 know any other more accurate way to describe 18 that.</p> <p>19 BY MS. STEINGART: 20 Q. So at no point between 21 February of 2002 and November of -- when 22 the going-flat transaction occurred, was 23 there any intermediate holding company 24 structure between NorthWestern Corp and 25 NorthWestern Energy, LLC?</p>	<p style="text-align: right;">Page 29</p> <p>1 NorthWestern Energy, LLC was managed and 2 reported through NorthWestern Public 3 Service Company to -- 4 A. They were managed by the same 5 people reporting to NorthWestern 6 Corporation, the owner. 7 Q. All right. 8 (Deposition Exhibit Number 4 9 marked for identification.) 10 BY MS. STEINGART: 11 Q. I'd like to show you what we've 12 marked as Hanson 4. 13 A. (Reviews document.) 14 Q. Sir, do you recognize Hanson 4 15 to be the minutes of the initial meeting of 16 the board of directors of NorthWest Energy 17 held April 2, 2002? 18 A. Yes. 19 Q. And you were present at that 20 meeting? 21 A. Yes. 22 Q. And you presented a proposed 23 slate of officers for NorthWest Energy, 24 correct? 25 A. Yes.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q. Then there was a discussion, if 2 you look at page 2 with me, it indicates 3 that you provided an executive summary, a 4 NorthWestern strategy update reviewing 5 specifically the 2002 strategic imperatives 6 and an overview of the integration of the 7 NorthWestern, LLC operations. 8 Do you see that? 9 A. Yes. 10 Q. So did NorthWestern Public 11 Services Group from a management 12 perspective oversee and review the 13 operations of NorthWestern Energy, LLC? 14 MR. KALECZYC: Objection. 15 THE WITNESS: I'm sorry, I don't 16 follow your reference to NorthWestern Public 17 Services Group. 18 BY MS. STEINGART: 19 Q. I'm sorry. Strike that. 20 Did NorthWestern Energy oversee 21 from a management perspective oversee and 22 manage the operations of NorthWestern 23 Energy, LLC? 24 A. I'm not sure I follow the 25 question. If the question was there some</p>	<p style="text-align: right;">Page 32</p> <p>1 THE WITNESS: Upon closing of the 2 purchase of the Montana Power, LLC, I was CEO 3 of both. 4 BY MS. STEINGART: 5 Q. Now, in addition to the 6 positions that you've had in NorthWest 7 Energy, you also had a title and a position 8 with respect to the NorthWestern Services 9 Group, correct? 10 MR. KALECZYC: Objection. 11 THE WITNESS: For a period of time 12 I did until that was eventually restructured 13 as well. 14 BY MS. STEINGART: 15 Q. And with respect to 16 NorthWestern Corporation there are 17 documents that refer to you as a partner 18 entity CEO. Are you familiar with that 19 term? 20 A. Yes. 21 Q. And what does that mean? 22 A. It is a reference that 23 NorthWestern used to its business lines, 24 some of those were subsidiaries, some 25 were -- in the case of utility, a division</p>
<p style="text-align: right;">Page 31</p> <p>1 kind of a subordination role between 2 NorthWestern Energy, LLC which was the 3 former Montana Power, LLC and the utility 4 formerly called NorthWestern Public Service 5 Division of NorthWestern, the answer is no. 6 All this is describing is, as I 7 said, we had lost through retirements a 8 series of the senior executives and in April 9 of 2002, we had decided to manage both 10 utilities if you will, Montana and the 11 former South Dakota, Nebraska with a single 12 slate of officers and an internal board, 13 they didn't have separate corporations and 14 therefore separate board of directors but an 15 internal management board as a tool and 16 technique to oversee those operations. It 17 does not describe the legal ownership 18 structure. 19 Q. Now, in addition to having a 20 position or a status in NorthWest Energy 21 that we've just reviewed in these minutes, 22 did you have a position or designation in 23 NorthWestern Energy, LLC? 24 MR. KALECZYC: Objection, 25 timeframe.</p>	<p style="text-align: right;">Page 33</p> <p>1 of. But the major business lines were 2 considered to be the utility operations what 3 eventually was called Expanets, Blue Dot and 4 CornerStone and the CEOs of each those 5 business lines were referred to as partner 6 entity CEOs. 7 Q. And the employment agreement 8 that you had with -- was with NorthWestern 9 Corporation, correct? 10 A. Yes. 11 Q. It's that employment agreement 12 that -- through which you received your 13 designations and titles and compensation, 14 correct? 15 A. I believe that's right. The 16 titles would be presented and approved by 17 the board and I don't know that at all times 18 the agreement was updated to conform to the 19 title given to me by the board, but 20 generally speaking, that's correct. 21 Q. So as time went on, you may 22 have gotten some more titles or 23 designations that weren't reflected 24 actually in the employment agreement? 25 A. There may have been times where</p>

<p style="text-align: right;">Page 38</p> <p>1 2002, were those requests made of 2 Mr. Hylland and Mr. Lewis? 3 A. I don't want to get tripped up 4 on terminology. I can recall jointly with 5 Mr. Jacobsen asking them to consider a -- an 6 alternative compensation approach or 7 program, if you will. But I don't recall 8 any time what I would consider just 9 discretionary compensation where based upon 10 their position or authority they could just 11 award a sum to someone, that just was not a 12 practice that we had at NorthWestern. 13 Q. Would it surprise you to learn 14 that it was Mr. Drook's understanding as 15 far as your compensation was concerned the 16 comp committee of the board looked to 17 Mr. Lewis and Mr. Hylland with respect to 18 their views? 19 MS. DELANEY: Objection. 20 THE WITNESS: I can't speak 21 to -- first of all, I don't know if Mr. Drook 22 was on what they call comp committee. I 23 remember him at one time being the chairman of 24 the governance committee, but -- assuming that 25 he was. I can't speak to who or what they</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes. 2 Q. Who attended the monthly 3 operation meetings of the NorthWestern 4 Energy businesses? 5 A. If I'm following the label that 6 you are giving to those, it would be this 7 (indicating) internal management board 8 referenced in Exhibit Hanson 4 and most of 9 the officers of NorthWestern Energy, 10 although they may not have attended each one 11 if they didn't have some item on the agenda 12 related to their scope of authority. 13 Q. So those persons that you 14 referenced would be Merle Lewis? 15 A. Again, generally I don't know 16 that Merle attended every one, but 17 Merle Lewis, Dick Hylland, myself, 18 Dan Newell, Eric Jacobsen, Kipp Orme as the 19 internal board, and then the officers listed 20 here or some combination of them. 21 Q. And "listed here" refers to 22 Exhibit 4. 23 And in addition to you received 24 periodic reports called management 25 financial information reports, correct,</p>
<p style="text-align: right;">Page 39</p> <p>1 relied on in their judgment, I wouldn't know. 2 BY MS. STEINGART: 3 Q. Getting back to the activities 4 that you engaged in with respect to 5 NorthWestern Corporation, during the year 6 you attended meetings with Mr. Lewis and 7 Mr. Hylland? 8 A. Yes. 9 MS. DELANEY: Do we have a 10 timeframe? 11 MS. STEINGART: During 2001 and 12 2002. 13 BY MS. STEINGART: 14 Q. In addition to having meetings 15 with Mr. Lewis and Mr. Hylland, from time 16 to time you attended board meetings of the 17 NorthWestern board? 18 A. Generally speaking, from time 19 to time I would attend parts of board 20 meetings. 21 Q. In addition to that there were 22 meetings -- there were operations meetings 23 that occurred on a periodic basis with 24 respect to the NorthWestern Energy 25 businesses?</p>	<p style="text-align: right;">Page 41</p> <p>1 during 2002? 2 A. Yes. 3 Q. Also the end of 2001, correct? 4 A. I don't know when those reports 5 began, but subject to verifying that it was 6 in 2001, most likely, yes. 7 MS. STEINGART: For the 8 convenience of counsel we've created another 9 binder. Do they have their binders? 10 MR. KIMBALL: Yes. 11 MS. STEINGART: I'm going to show 12 you another binder called the management 13 financial information report binder so this 14 way you have -- and we've put in there -- and 15 just -- there is one for the witness here 16 so -- just for reference during the 17 deposition, we've put in the MFIRs that are 18 dated December 2001 through November 2002. 19 BY MS. STEINGART: 20 Q. So would you agree with me, 21 sir, looking at the binder that we've 22 placed before you that at least for the 23 period December 2001 though November 2002 24 there was periodic management financial 25 information reports that were distributed</p>

<p style="text-align: right;">Page 42</p> <p>1 to the partner entity CEOs among others?</p> <p>2 MR. KALECZYC: Could you read back</p> <p>3 the question for me, please?</p> <p>4 (Whereupon, the court reporter</p> <p>5 read back the previous question.)</p> <p>6 THE WITNESS: I'm not sure I know</p> <p>7 the full distribution list. But if your</p> <p>8 question is did I receive these reports at</p> <p>9 least for this period of time, the answer is</p> <p>10 yes, I did.</p> <p>11 BY MS. STEINGART:</p> <p>12 Q. Thank you. In addition to</p> <p>13 those reports, there were monthly meetings</p> <p>14 of a group called the executive/staff of</p> <p>15 NorthWestern, correct?</p> <p>16 A. Yes.</p> <p>17 (Deposition Exhibit Number 5</p> <p>18 marked for identification.)</p> <p>19 BY MS. STEINGART:</p> <p>20 Q. Sir, I've placed before you</p> <p>21 what we've marked as Hanson Exhibit 5. Do</p> <p>22 you recognize that to be a calendar for</p> <p>23 2002 with respect to management financial</p> <p>24 and information report meeting?</p> <p>25 A. (Reviews document.) That's</p>	<p style="text-align: right;">Page 44</p> <p>1 believe I attended those, Kipp Orme would host</p> <p>2 them, Dick Hylland I think attended many, if</p> <p>3 not most, but Dave Monaghan who was the</p> <p>4 controller of the utility. And the purpose of</p> <p>5 that was to work on the financial information</p> <p>6 that was eventually included in these reports</p> <p>7 which were circulated to the partner entity</p> <p>8 CEOs.</p> <p>9 Again, as I said, I don't know the</p> <p>10 full distribution list.</p> <p>11 BY MS. STEINGART:</p> <p>12 Q. And the financial information</p> <p>13 and other business issues that were current</p> <p>14 at the businesses were discussed at the NOR</p> <p>15 staff executive meeting?</p> <p>16 A. I think you may be -- there is</p> <p>17 a third set of meetings -- whether you are</p> <p>18 confusing or just confusing me with the</p> <p>19 references that -- the NOR staff meeting,</p> <p>20 Merle's staff focused on NorthWestern</p> <p>21 business.</p> <p>22 And again, for the most part,</p> <p>23 there was not a lot of discussion about</p> <p>24 the --in fact, I don't think the other</p> <p>25 partner entity CEOs routinely attended</p>
<p style="text-align: right;">Page 43</p> <p>1 what it purports to be. I don't recall</p> <p>2 seeing such a calendar, but that's what it</p> <p>3 purports to be.</p> <p>4 Q. Do you see the first bullet</p> <p>5 point where it says "11th floor NOR</p> <p>6 boardroom immediately following the NOR</p> <p>7 staff/executive meeting"?</p> <p>8 A. Yes.</p> <p>9 Q. So did -- when these meetings</p> <p>10 occurred, were there staff/executive</p> <p>11 meetings then followed by meetings where</p> <p>12 the, if you'll excuse my reference to</p> <p>13 MFIRs, were discussed?</p> <p>14 MS. DELANEY: Objection.</p> <p>15 THE WITNESS: As best I recall</p> <p>16 there was a staff meeting or executive meeting</p> <p>17 that I would attend that was Merle Lewis,</p> <p>18 Dick Hylland, the corporate officers and we</p> <p>19 would have periodic staff meetings. Following</p> <p>20 that, the financial reporting personnel would</p> <p>21 attend a meeting to discuss the preparation of</p> <p>22 these financial information reports that you</p> <p>23 are calling MFIRs.</p> <p>24 For the most part, subject to</p> <p>25 going back and looking at that, I don't</p>	<p style="text-align: right;">Page 45</p> <p>1 those.</p> <p>2 So there wasn't a lot of</p> <p>3 discussion about business issues or</p> <p>4 developments or whatever that was going on</p> <p>5 in their businesses. They, like</p> <p>6 NorthWestern Energy, had their own version</p> <p>7 of an operations meeting where we would go</p> <p>8 through those details with our internal</p> <p>9 board, but I was not on those and didn't</p> <p>10 attend them. We had a -- some frequency,</p> <p>11 I'm not certain exactly how much, but I</p> <p>12 believe quarterly there was what was called</p> <p>13 a partner entity CEO meeting where Merle,</p> <p>14 Dick, myself and the other partner entity</p> <p>15 CEOs, couple of the other corporate officers</p> <p>16 would get together and just discuss</p> <p>17 generally the businesses.</p> <p>18 Q. The quarterly meetings that you</p> <p>19 referenced, were there minutes kept at</p> <p>20 those meetings?</p> <p>21 A. I don't recall if there was.</p> <p>22 (Deposition Exhibit Number 6</p> <p>23 marked for identification.)</p> <p>24 BY MS. STEINGART:</p> <p>25 Q. I'd like to show you what we've</p>

<p style="text-align: right;">Page 62</p> <p>1 business that was being acquired by 2 NorthWestern would be exposed to risks 3 presented by the non-utility businesses 4 being run by NorthWestern?</p> <p>5 MS. DELANEY: At what time?</p> <p>6 MS. STEINGART: Would you read the 7 question back.</p> <p>8 (Whereupon, the previous question 9 was read back by the court reporter.)</p> <p>10 MR. KALECZYC: Objection, 11 timeframe.</p> <p>12 THE WITNESS: My understanding is 13 that their standard for review is to determine 14 whether or not the utility in Montana would 15 remain a fit and able provider of utility 16 service after the transaction was completed. 17 There were lots of questions asked by 18 intervening parties and commissioners at the 19 hearing, I don't recall without looking at the 20 transcript to what extent they inquired about 21 non-utility businesses.</p> <p>22 BY MS. STEINGART:</p> <p>23 Q. Now, was the Montana Public 24 Service Commission concerned that there 25 would be increased capital costs for the</p>	<p style="text-align: right;">Page 64</p> <p>1 their concerns, only my recollection of what 2 their scope of inquiry is and, again, they 3 asked lots of questions. Now, you infer from 4 that a concern, I don't know that.</p> <p>5 BY MS. STEINGART:</p> <p>6 Q. Was it important to the Montana 7 Public Service Commission that the 8 utilities' cost of capital not be increased 9 by the risks that the non-regulated 10 businesses posed to NorthWestern's 11 financial condition?</p> <p>12 MS. DELANEY: Objection.</p> <p>13 MR. KALECZYC: Objection.</p> <p>14 THE WITNESS: I have no way of 15 knowing if that issue was of importance to 16 them or not.</p> <p>17 What I know is that -- what their 18 stated inquiry was because that was clear. On 19 the onset of the application of the hearing, 20 they asked through discovery, on the stand 21 many, many questions and approved the 22 application.</p> <p>23 What importance they gave to one 24 issue or the other, I can't speak to that. I 25 don't know.</p>
<p style="text-align: right;">Page 63</p> <p>1 utilities because of the risks that the 2 non-regulated businesses posed to the 3 financial condition of NorthWest?</p> <p>4 MS. DELANEY: Objection.</p> <p>5 MR. KALECZYC: Objection.</p> <p>6 THE WITNESS: I apologize, but I 7 do not recall that question. The transcripts 8 will tell you the questions and responses.</p> <p>9 But again, they were trying to 10 establish to their satisfaction whether they 11 believed that the utility would remain a fit 12 and able provider after closing and ask a lot 13 of questions about the management, about all 14 sorts of things. I do not recall that 15 particular question.</p> <p>16 BY MS. STEINGART:</p> <p>17 Q. Wasn't the Montana Public 18 Service Commission concerned that the 19 stability of the utility businesses should 20 not be adversely affected by the risks 21 presented by NorthWestern's non-regulated 22 businesses?</p> <p>23 MS. DELANEY: Objection.</p> <p>24 MR. KALECZYC: Objection.</p> <p>25 THE WITNESS: I can't speak to</p>	<p style="text-align: right;">Page 65</p> <p>1 BY MS. STEINGART:</p> <p>2 Q. So when you told the 3 commissioners that NorthWestern had the 4 managerial and financial capability to 5 acquire MPC, you did not believe that you 6 were telling them that the stability of the 7 utilities would not be threatened by 8 NorthWestern's non-regulated businesses?</p> <p>9 MR. KALECZYC: Objection.</p> <p>10 MS. DELANEY: Objection.</p> <p>11 MR. KALECZYC: The pre-file 12 testimony speaks for itself.</p> <p>13 MS. STEINGART: I'm asking him 14 what he believed he was telling them.</p> <p>15 THE WITNESS: I absolutely 16 believed at the time we had both the 17 managerial capability and the financial 18 capability to complete the transaction and 19 operate the utility as a fit and able provider 20 after closing.</p> <p>21 BY MS. STEINGART:</p> <p>22 Q. So you --</p> <p>23 A. In connection with that, I 24 didn't have any knowledge or belief that 25 there were the threats that you are</p>

<p style="text-align: right;">Page 110</p> <p>1 question the transaction was accretive to 2 earnings and cash flow and therefore 3 strengthened the financial profile of the 4 company. 5 BY MS. STEINGART: 6 Q. Do you understand now as you 7 look at this that that transaction, that 8 the common thread that you referred to in 9 those offerings were giving pro forma 10 effect to the acquisition of Montana Power? 11 MR. KALECZYC: Objection. 12 MS. DELANEY: Objection. 13 THE WITNESS: I think that's a 14 truism. 15 BY MS. STEINGART: 16 Q. The paragraph goes on to say 17 that NOR's retention of an investment grade 18 rating during this period, dash, absolutely 19 crucial to future liquidity, dash, was 20 entirely dependent on the pro forma utility 21 operations. 22 Do you see that? 23 A. I see the reference. 24 Q. Did you tell the Montana Public 25 Service Commission that the credit ratings</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. It goes on to say that without 2 the Montana Power Company transaction, it 3 is doubtful that these capital transactions 4 could have been completed. 5 Do you see that? 6 A. I see it. 7 Q. Now, that's what you were 8 telling your superiors in or about March of 9 2002, correct? 10 A. It's part of what we were 11 telling them in this memo. 12 Q. Okay. If we could go back to 13 the January 28th executive committee 14 minutes. Sir, could you look at Exhibit 6 15 again? 16 Now, even in January you were 17 aware of the problems that Expanets was 18 having, correct. 19 A. I was aware that they were 20 having problems, have any knowledge of the 21 details, but they reported a number of times 22 including this that they were having 23 problems and they were working to fix them. 24 Q. At the meeting that you 25 attended on the 28th, there was an update</p>
<p style="text-align: right;">Page 111</p> <p>1 that NorthWestern had at the time it made 2 its application and that you gave its 3 testimony -- strike that. 4 Did you tell the Montana Public 5 Service Commission that NorthWestern's 6 credit ratings that existed at the time you 7 gave your testimony in January was 8 dependent on the pro forma utility 9 operations? 10 MR. KALECZYC: Objection. 11 THE WITNESS: Candidly, this 12 statement is -- this is overstating it. Do 13 the credit ratings depend on the financial 14 strength cash flow interest rate coverage 15 ratios? Of course. Is it important to 16 strengthen the company to have an accretive 17 transaction, earnings and cash flow? Of 18 course. Are they entirely dependent on that? 19 No, I don't believe that to be the case and 20 obviously there is some advocacy going on. 21 The point we are trying to convey was this was 22 very important, took a lot of hard work from 23 people and deserves recognition, very 24 beneficial to our company. 25 BY MS. STEINGART:</p>	<p style="text-align: right;">Page 113</p> <p>1 given with respect to the Expert system at 2 Expanets, correct? 3 A. This would indicate that, yes. 4 Q. And you gave a presentation at 5 that meeting concerning the 6 Montana Power Company acquisition, correct? 7 A. I did, yes. 8 Q. And Mr. Orme gave a 9 presentation with a financial update, 10 right? 11 A. Yes, it appears that. 12 Q. Now, if we look at -- and these 13 are the kinds of updates that occurred 14 throughout the year at these meetings, 15 right? 16 A. There were updates like that, 17 you know, each of the minutes, you know, I 18 describe the specific ones. 19 Q. In addition to a finance update 20 by Mr. Orme, right? 21 A. I'm sorry? 22 Q. In addition to this finance 23 update -- I'm sorry, I'm looking at the 24 page after your presentation. 25 A. Mr. Orme gave a finance update,</p>

<p style="text-align: right;">Page 114</p> <p>1 yes.</p> <p>2 Q. If we could look at that</p> <p>3 together. Here Mr. Orme talks about the</p> <p>4 money that was raised in the offerings,</p> <p>5 doesn't he?</p> <p>6 MR. KALECZYC: Objection.</p> <p>7 THE WITNESS:</p> <p>8 Indicates that -- he's talking about an</p> <p>9 offering.</p> <p>10 BY MS. STEINGART:</p> <p>11 Q. He's talking about a 100</p> <p>12 million retail trust preferred that</p> <p>13 occurred in January?</p> <p>14 A. Yes, that's what it says.</p> <p>15 Q. That was just two days after</p> <p>16 your testimony to the Montana Power</p> <p>17 Commission, correct?</p> <p>18 A. I don't remember the dates, but</p> <p>19 I think it was January, yes.</p> <p>20 Q. And it goes on to say "He noted</p> <p>21 that these preferred offerings are helpful,</p> <p>22 however, there are still significant cash</p> <p>23 flow issues affecting NOR."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 116</p> <p>1 doesn't talk about immediacy of the issue or</p> <p>2 what to do. And you haven't gotten into the</p> <p>3 rest of 2002, but we, you know, spent a lot</p> <p>4 of time working to improve the cost</p> <p>5 structure and therefore cash flow.</p> <p>6 Q. He indicates that there are</p> <p>7 significant cash flow issues affecting NOR.</p> <p>8 Do you see that?</p> <p>9 A. I see the reference, yes.</p> <p>10 Q. At or about that time, what did</p> <p>11 you understand those cash flow issues to</p> <p>12 be?</p> <p>13 A. I understood that these</p> <p>14 businesses were not meeting their</p> <p>15 projections. They were using more cash than</p> <p>16 anticipated. They were providing less than</p> <p>17 anticipated missing earnings targets and</p> <p>18 that the management of those businesses said</p> <p>19 they had the issues in hand, they were</p> <p>20 working to improve them and this is nothing</p> <p>21 more than the CFO saying we all need to</p> <p>22 continue our efforts to improve the cash</p> <p>23 flow of the company going forward. That was</p> <p>24 my understanding.</p> <p>25 Q. And you understood that they</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. At the end, if you look at the</p> <p>2 last sentence with me, he reminded everyone</p> <p>3 that NOR has gone through \$175 million of</p> <p>4 cash during the last quarter.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. 55 to Blue Dot, right?</p> <p>8 A. That's what it says, yes.</p> <p>9 Q. 70 to Expanets?</p> <p>10 A. Yes.</p> <p>11 Q. 13 to CornerStone?</p> <p>12 A. Yes.</p> <p>13 Q. 20 to NOR, right?</p> <p>14 A. Yes.</p> <p>15 Q. And then he says "In essence we</p> <p>16 are no better off regarding working capital</p> <p>17 than we were before the \$200 million</p> <p>18 offering."</p> <p>19 Do you see that?</p> <p>20 A. I see it, that's what it says.</p> <p>21 It doesn't -- look, talking about an</p> <p>22 offering that was made, monies received, it</p> <p>23 talks about how they were used in working</p> <p>24 capital. And, you know, clearly they are</p> <p>25 looking at having to approve it. But it</p>	<p style="text-align: right;">Page 117</p> <p>1 were not only missing their projections but</p> <p>2 they were not generating enough cash to</p> <p>3 cover their operating cash flow, correct?</p> <p>4 MS. DELANEY: Objection.</p> <p>5 THE WITNESS: I don't recall ever</p> <p>6 having that understanding. But what you are</p> <p>7 talking about is, again, a time-specific, not</p> <p>8 all businesses are positive cash flow every</p> <p>9 day or every month. The utility is negative</p> <p>10 cash flow today. Usually two out of four</p> <p>11 quarters of the year, seasonal businesses. So</p> <p>12 did I have the understanding? I do not recall</p> <p>13 that understanding. Would that necessarily</p> <p>14 alarm me? No.</p> <p>15 BY MS. STEINGART:</p> <p>16 Q. In fact, that Expanets had</p> <p>17 negative cash flow for an entire year did</p> <p>18 not alarm you?</p> <p>19 MS. DELANEY: Objection.</p> <p>20 THE WITNESS: In and of itself</p> <p>21 that does not describe what Expanets was</p> <p>22 saying it's doing about the problem or how</p> <p>23 it's going to improve the operations.</p> <p>24 BY MS. STEINGART:</p> <p>25 Q. When Expanets continued to have</p>

<p style="text-align: right;">Page 118</p> <p>1 negative cash flow in the first quarter of 2 2002, did that concern you? 3 MR. KALECZYC: Objection. 4 THE WITNESS: I don't have any 5 recollection of being concerned. I hear what 6 they reported, their explanations seemed 7 logical, taking action to improve it, the 8 reports will speak for themselves. 9 BY MS. STEINGART: 10 Q. So in January you knew that 11 these issues existed and you also knew them 12 in March, right? 13 MR. KALECZYC: Objection. 14 BY MS. STEINGART: 15 Q. You knew the issues with 16 respect to Expanets and the issues with 17 respect to cash flow existed in March too, 18 didn't you? 19 A. Are you referring to the memo 20 we just looked at? 21 Q. Indeed I am. 22 A. I believe the memo references 23 2001 performance. And 2001 was completed as 24 of the end of the year. 25 Q. Let's look again. We are</p>	<p style="text-align: right;">Page 120</p> <p>1 MR. KALECZYC: Objection. 2 THE WITNESS: As I just said, 3 Counselor, what I knew or what information I 4 had to me was entirely what was given in the 5 various reports. 6 BY MS. STEINGART: 7 Q. Okay. 8 A. And my recollection of those, 9 they will speak for themselves. Every time 10 they discussed a problem there was also a 11 discussion of actions they were going to do 12 about it and the constant theme was it's 13 going to improve, going to improve. 14 Q. So they fooled you? 15 MS. DELANEY: Objection. 16 MR. KALECZYC: Objection. 17 BY MS. STEINGART: 18 Q. Did they fool you? 19 MR. KALECZYC: Objection. 20 BY MS. STEINGART: 21 Q. Do you think that they fooled 22 you? As you sit here today, knowing what 23 you know today, did they fool you? 24 MS. DELANEY: Objection. 25 THE WITNESS: I don't accept that</p>
<p style="text-align: right;">Page 119</p> <p>1 reading on page 3, I think. "The 2 difficulties...", and I'm looking at that 3 paragraph after it talks about the 4 disappointing 2001. The paragraph goes on 5 to say "The difficulties encountered in 6 obtaining a third-party credit facility and 7 in implementing the Expert software system 8 required NOR to substantially increase its 9 cash commitment to Expanets." 10 Do you see that? 11 A. I see it and it doesn't have a 12 time reference. 13 Q. So is it your testimony, as you 14 sit here today, that you understood that as 15 being only in 2001? 16 A. I didn't say that, but on its 17 face, it is historic and the reference at 18 the top of the paragraph says the last half 19 of 2001. 20 Q. But you knew that these issues 21 that are referred to in the sentence the 22 difficulty in the third-party credit 23 facility in implementing Expert software 24 had continued into the beginning of 2002, 25 right?</p>	<p style="text-align: right;">Page 121</p> <p>1 characterization. I don't think that question 2 is -- 3 BY MS. STEINGART: 4 Q. Okay. Let's look at some other 5 things then. Let's look at the MFIRs. You 6 have a binder of those documents, why don't 7 we look at them. Let's look at May 2002. 8 If we could look at page 458111. Do you 9 see that on the bottom of that page there 10 is a chart that shows incremental 11 borrowings by Expanets? 12 A. I see that. 13 Q. Did you understand that during 14 March and April that the incremental 15 borrowings of Expanets were increasing? 16 A. I'm sorry, are you looking at 17 the graph? 18 Q. Yeah, I'm looking at the chart 19 on the bottom of page 458111. 20 A. And how is it that you are -- 21 Q. Do you see the chart shows 22 NorthWestern incremental borrowings? 23 A. Yes. 24 Q. Do you understand that this 25 chart depicts the borrowings of Expanets</p>

<p style="text-align: right;">Page 122</p> <p>1 from NorthWestern?</p> <p>2 A. I'm not sure that's what it's</p> <p>3 showing, incremental borrowings from</p> <p>4 NorthWestern by Expanets.</p> <p>5 Q. Right. It says the chart</p> <p>6 showing the current -- this is the Expanets</p> <p>7 section, right? It says "Expanets" at the</p> <p>8 top of the page, do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And there is a sentence here</p> <p>11 that says "A chart showing..." and I'm</p> <p>12 reading from the middle of the paragraph</p> <p>13 right above that chart, "A chart showing</p> <p>14 the current forecasted borrowings and</p> <p>15 repayment schedule to NorthWest has been</p> <p>16 added below."</p> <p>17 Do you see that? And one line</p> <p>18 shows --</p> <p>19 A. I must need reading glasses, I</p> <p>20 apologize.</p> <p>21 Q. I can wait until you are with</p> <p>22 me.</p> <p>23 A. Can you help me with the line?</p> <p>24 Q. Sure. If you look --</p> <p>25 A. Thank you. Okay. Yes, that's</p>	<p style="text-align: right;">Page 124</p> <p>1 given to you, you received the MFIR?</p> <p>2 A. That's right. I cannot explain</p> <p>3 to you the details behind it. I did not</p> <p>4 manage those businesses. I do not know</p> <p>5 those details. I did not know those</p> <p>6 details. All I had was the information</p> <p>7 given to me. And as I said, you asked me a</p> <p>8 recollection question, and the recollection</p> <p>9 is consistent that they were saying we are</p> <p>10 having problems but we are going to fix it</p> <p>11 and things will improve. And I think this</p> <p>12 chart says that.</p> <p>13 Q. So this says by May they were</p> <p>14 borrowing over \$140 million from NorthWest,</p> <p>15 correct?</p> <p>16 A. It would indicate that.</p> <p>17 Q. Did some of that \$140 million</p> <p>18 come from the utility operations?</p> <p>19 MR. KALECZYC: Objection.</p> <p>20 BY MS. STEINGART:</p> <p>21 Q. Do you know?</p> <p>22 A. I don't know how you can make</p> <p>23 that statement, it come from the general</p> <p>24 funds of the corporation. Each business</p> <p>25 uses an amount of cash for investment and</p>
<p style="text-align: right;">Page 123</p> <p>1 what it says.</p> <p>2 Q. Okay.</p> <p>3 A. Yes.</p> <p>4 Q. All right.</p> <p>5 A. And to my earlier point, it</p> <p>6 shows falling off as the year goes on.</p> <p>7 Q. Indeed it does. But you</p> <p>8 learned later that those borrowings weren't</p> <p>9 going to be repaid, didn't you?</p> <p>10 MR. KALECZYC: Objection.</p> <p>11 THE WITNESS: I don't know what</p> <p>12 you are referencing. But back to the</p> <p>13 foundation of your question, what relevance</p> <p>14 after acquired information, hindsight, in</p> <p>15 other words, has to my understanding at the</p> <p>16 time -- I'm missing the point of your</p> <p>17 question.</p> <p>18 BY MS. STEINGART:</p> <p>19 Q. Well, this is something -- the</p> <p>20 incremental borrowings is something that</p> <p>21 you understood were occurring in May of</p> <p>22 2002, correct? Or --</p> <p>23 A. I have no understanding other</p> <p>24 than the information given to me.</p> <p>25 Q. Well, this was information</p>	<p style="text-align: right;">Page 125</p> <p>1 expense and they generate cash. The utility</p> <p>2 was positive cash flow.</p> <p>3 Q. You also knew at this time</p> <p>4 because of what's contained in this</p> <p>5 document that they were still doing system</p> <p>6 fixes to Expanets, correct?</p> <p>7 A. That is what they are</p> <p>8 indicating, yes.</p> <p>9 Q. And at this point they are</p> <p>10 anticipating system fixes being implemented</p> <p>11 by July, right? "System fixes scheduled to</p> <p>12 be implemented on July 4 are expected to</p> <p>13 fix many of the billing problems that have</p> <p>14 been occurring with customer bills."</p> <p>15 Do you see that?</p> <p>16 A. I'm not finding a line</p> <p>17 reference.</p> <p>18 Q. It's a couple of lines above</p> <p>19 the line about the chart.</p> <p>20 A. Okay, I see that now, yes.</p> <p>21 Q. Okay. Now, at that point, did</p> <p>22 anyone tell you when they expected to fix</p> <p>23 all of the billing problems? This talks</p> <p>24 about many of the billing problems, was</p> <p>25 there any conversation in or about May</p>

<p style="text-align: right;">Page 138</p> <p>1 reports were including cash of partner 2 entities and no longer due, I don't know 3 that.</p> <p>4 Q. Well, let's talk about the 5 partner entities for a minute. Expanets 6 didn't have any cash, did it?</p> <p>7 MR. KALECZYC: Objection. 8 MS. DELANEY: Objection. 9 THE WITNESS: I don't know. 10 BY MS. STEINGART: 11 Q. Certainly if Expanets had cash, 12 it could have been used to repay some of 13 those borrowings, right?</p> <p>14 MR. KALECZYC: Objection. 15 MS. DELANEY: Objection. 16 THE WITNESS: Are you asking me 17 the hypothetical if they had cash could they 18 use it for things they use cash for? 19 BY MS. STEINGART: 20 Q. As far as you know, did 21 Expanets have any cash? 22 MR. KALECZYC: Objection. 23 THE WITNESS: I do not know. 24 BY MS. STEINGART: 25 Q. Blue Dot?</p>	<p style="text-align: right;">Page 140</p> <p>1 correct? 2 A. I got the reports, yes. 3 Q. And over the course of the 4 year, you were informed that the repayments 5 of those incremental borrowings would be 6 less than they were anticipated to be at 7 the beginning of the year, correct? 8 A. I got the updates provided 9 here, yes. 10 Q. And at some point you received 11 a further update that said that Expanets 12 wouldn't be paying anything back by the end 13 of the year, right? 14 A. I'm sorry, what? 15 Q. You knew that, didn't you, by 16 the fall of 2002, you knew Expanets was not 17 going to pay any of that anticipated 18 190 million of borrowings during 2002, 19 right? 20 MR. KALECZYC: Objection. 21 THE WITNESS: I don't believe so. 22 I don't know where you get that reference. 23 And incidentally just watching the cash 24 balance here, collective -- accepting there 25 may be cash at partner entities, that pattern</p>
<p style="text-align: right;">Page 139</p> <p>1 MR. KALECZYC: Objection. 2 THE WITNESS: I don't know. 3 BY MS. STEINGART: 4 Q. CornerStone? 5 A. I don't know. 6 Q. Indeed at this point, as you 7 sit here today, the only partner entity 8 that you are aware of that could have had 9 cash was the regulated companies, correct? 10 MR. KALECZYC: Objection. 11 MS. DELANEY: Objection. 12 THE WITNESS: I do not agree. 13 Could have had cash? Any of them could have 14 had cash. I think I just testified I don't 15 know what they had -- I do know the utility 16 was generating positive cash flow on an 17 annualized basis, but you are also coming into 18 the fall of the year where the demands for 19 energy purchases -- we had an all-time peak 20 use of cash at the utility at that time. And 21 then it turns as you get into the winter months. 23 BY MS. STEINGART: 24 Q. So over the course of the year, you were informed Expanets had borrowings,</p>	<p style="text-align: right;">Page 141</p> <p>1 doesn't surprise me at all just given the 2 seasonality of the utility business. It 3 doesn't mean that it's not going to improve. 4 And that is my recollection, that these 5 reports will speak for themselves. But every 6 time they come with a -- or missing a 7 projection there is also an indication that 8 it's going to improve. Those charts say that. 9 BY MS. STEINGART: 10 Q. And during the fall there was a 11 lot of activity going on at NorthWest to 12 raise funds to meet pressing liquidity 13 needs during that period, right? 14 MR. KALECZYC: Objection. 15 MS. DELANEY: Objection. 16 THE WITNESS: I don't accept your 17 characterization of "pressing liquidity 18 needs." Were there activities to raise cash? 19 Yes, they are in the reports. 20 BY MS. STEINGART: 21 Q. And without that cash wouldn't 22 there have been serious implications for 23 NorthWest's credit ratings without raising 24 that cash? 25 MR. KALECZYC: Objection.</p>

<p style="text-align: right;">Page 222</p> <p>1 THE WITNESS: We'd have to check 2 the minutes to see what they say. I do recall 3 a discussion of that with the board where 4 counsel updated the board. But whether that 5 was an executive session that didn't get 6 detail in the minutes, again, I don't know 7 without going through all of these.</p> <p>8 MS. STEINGART: To the extent such 9 a document exists, such a reference in the 10 board minutes exists, I would ask that it be 11 produced.</p> <p>12 BY MS. STEINGART:</p> <p>13 Q. Let's talk about what you did 14 in furtherance of this directive. I'd like 15 to show you what we've marked as 22 and 23.</p> <p>16 A. (Reviews document.)</p> <p>17 MS. STEINGART: Actually, as part 18 of 23 there are two copies of the officer's 19 certificate. You can take off that last one. 20 It's not signed.</p> <p>21 MS. DELANEY: Do you want it 22 removed from the exhibit?</p> <p>23 MS. STEINGART: Yeah, could you 24 remove it.</p> <p>25 MS. DELANEY: Blue page and all?</p>	<p>1 but --</p> <p>2 Q. Well, evidently you stood in 3 for Mr. Monaghan.</p> <p>4 A. Maybe. But yes, officer's 5 certificate signed by me. That is my 6 signature.</p> <p>7 Q. Do you understand what an 8 officer's certificate is?</p> <p>9 A. Yes.</p> <p>10 Q. If you look at paragraph 3 with 11 me.</p> <p>12 A. Uh-huh.</p> <p>13 Q. And in paragraph 3 you certify 14 that all conditions precedent, provided for 15 in the indenture relating to the execution 16 and delivery of the second supplemental 17 indenture dated as of the date hereof among 18 NorthWestern Energy, LLC and the trustee 19 including any covenants compliance which 20 constitute a condition precedent have been 21 complied with."</p> <p>22 Do you see that?</p> <p>23 A. Yes, I do.</p> <p>24 Q. What did you do to satisfy 25 yourself that that was correct?</p>
<p style="text-align: right;">Page 223</p> <p>1 MS. STEINGART: Yes. Thank you.</p> <p>2 THE WITNESS: (Reviews document.)</p> <p>3 BY MS. STEINGART:</p> <p>4 Q. My only question with respect 5 to 22 is whether you recognize it to be the 6 second supplemental indenture that you 7 executed on behalf of NorthWest Energy on 8 or about August 13, 2002?</p> <p>9 A. I believe that it is.</p> <p>10 Q. And with respect to 23 --</p> <p>11 A. Was I supposed to remove 12 something?</p> <p>13 Q. Yeah, just the blue page and 14 beyond.</p> <p>15 A. (Complies.)</p> <p>16 Q. And with respect to 23, that is 17 the officer's certificate that you executed 18 in August 2002 in connection with that 19 second supplemental indenture.</p> <p>20 A. (Reviews document.) Well, it's 21 an officer's certificate and that is my 22 signature. I'm not sure why it says "The 23 undersigned, David A. Monaghan, in his 24 capacity as CEO does hereby certify on 25 behalf of NorthWestern Energy that..."</p>	<p>1 A. I reviewed the documents that 2 are referenced in that case, it's the second 3 supplement and the fourth, it's the 4 indenture, and required of other management, 5 particularly Mr. Monaghan, and of counsel, 6 basically whether the conditions stated were 7 in compliance.</p> <p>8 Q. Well, doesn't paragraph 6 say 9 that counsel was relying on you?</p> <p>10 A. It indicates that Paul Hastings 11 will rely on the accuracy and truth of the 12 foregoing for purposes of rendering its 13 opinion to the trustee. But the 14 conversations I had were with -- 15 Euclid Irving was one of the attorneys 16 advising on the -- advising me and 17 NorthWestern Energy, LLC on the transaction.</p> <p>18 Q. So you certified paragraph 3 19 based on what Mr. Monaghan told you?</p> <p>20 MS. DELANEY: Objection.</p> <p>21 THE WITNESS: I don't think I said 22 that. Based, number 3, on personal inquiry 23 and information provided to me by management 24 including Mr. Monaghan and advice of counsel.</p> <p>25 BY MS. STEINGART:</p>

<p style="text-align: right;">Page 226</p> <p>1 Q. And describe the substance of 2 the personal inquiry. 3 A. Reading the documents to figure 4 out what conditions precedent existed. And 5 then inquiring whether or not we were in 6 compliance with those conditions. 7 Q. As you sit here today, do you 8 recall what conditions precedent that you 9 inquired into? 10 A. I don't recall. But I think 11 they are in the document. 12 Q. And in preparation for this 13 deposition, did you look at any of those 14 things? 15 A. I did not, no. 16 Q. Paragraph 4 says that you've 17 read the applicable provisions of the 18 indenture. 19 Do you see that? 20 A. Yes. 21 Q. What provisions did you read? 22 A. I don't recall specifically. I 23 had available the entire indenture document, 24 it was a -- I don't remember the date of it, 25 it's an older document, and went though its</p>	<p style="text-align: right;">Page 228</p> <p>1 or not. 2 Q. And it indicates here "As well 3 as the indenture and such corporate records 4 and other instruments and documents." 5 What corporate records did you 6 look at? 7 A. I don't remember looking at 8 other corporate records. I recall making 9 inquiries of some number of people including 10 Mr. Monaghan and counsel, Euclid Irving. 11 Q. As you sit here today, do you 12 recall either what Mr. Monaghan or what 13 counsel told you in that regard? 14 A. Generally. Not the specific 15 words. 16 Q. What did they tell you? 17 A. That, in general, the substance 18 was that we are -- we meet the requirements 19 of the covenants and the conditions. 20 Q. And did you ask them what they 21 were they basing -- what information they 22 based those conclusions on? 23 A. I don't recall asking him that. 24 Q. Did they prepare memos or 25 summaries for you concerning what they</p>
<p style="text-align: right;">Page 227</p> <p>1 provisions. 2 Q. It's a document that we marked 3 just by happenstance as the first exhibit 4 to this deposition. Is this the document 5 (indicating)? 6 A. (Reviews document.) Yes. 7 Q. It says you've also examined 8 originals or copies certified to his 9 satisfaction of the various certificates 10 and instruments prepared in connection with 11 the execution and delivery of the second 12 supplemental indenture. 13 What certificates and 14 instruments did you review? 15 A. I don't remember other than 16 the -- the supplement indenture itself. I 17 don't remember if there are certificates and 18 instruments in connection with it. If there 19 are, I think I was provided with a complete 20 packet. 21 Q. Do you have a recollection of 22 that? 23 A. I don't know if there are 24 such -- I don't recall if there are other 25 certificates and instruments related to that</p>	<p style="text-align: right;">Page 229</p> <p>1 looked at and what they found in the things 2 they looked at? 3 A. I don't recall if there was 4 memos or other written material provided. 5 Q. Then it goes on to say "And 6 made such examination and investigation as, 7 in his opinion, is necessary to enable him 8 to express an informed opinion as to 9 whether or not such covenants and 10 conditions have been complied with." 11 A. Yes. 12 Q. What examination and 13 investigation did you make? 14 A. Just what I told you. 15 Q. So that just refers to what you 16 received from Mr. Monaghan and counsel? 17 A. As I said, there may have been 18 some number other than just Mr. Monaghan. 19 But my specific recollection today is that I 20 discussed with Mr. Monaghan and with 21 Mr. Irving. 22 Q. Did you take any steps to 23 assure yourself that there was the capacity 24 to pay principal and interest on the part 25 of NorthWestern Corporation when you</p>

<p style="text-align: right;">Page 230</p> <p>1 executed this indenture?</p> <p>2 MS. DELANEY: Objection.</p> <p>3 (Whereupon, the court reporter</p> <p>4 read back the previous question.)</p> <p>5 THE WITNESS: I don't recall</p> <p>6 taking any specific steps relative to that</p> <p>7 question. But based on my view at the time, I</p> <p>8 certainly -- I believe that there was such</p> <p>9 capacity. In fact, I think such payments were</p> <p>10 made.</p> <p>11 BY MS. STEINGART:</p> <p>12 Q. And was your view at the time</p> <p>13 based on the company's SEC filings and</p> <p>14 other public financial statements?</p> <p>15 A. In part as well as the other</p> <p>16 management reports, financial reports we</p> <p>17 talked about.</p> <p>18 (Deposition Exhibit Number 26</p> <p>19 marked for identification.)</p> <p>20 BY MS. STEINGART:</p> <p>21 Q. I'd like to show you what we've</p> <p>22 marked as Hanson 26. It's a memo dated</p> <p>23 October 16th to the board from Mr. Lewis</p> <p>24 and Mr. Hylland.</p> <p>25 A. (Reviews document.)</p>	<p style="text-align: right;">Page 232</p> <p>1 entity CEOs went through our portion of a</p> <p>2 presentation as well as the overall</p> <p>3 discussion by Mr. Hylland.</p> <p>4 Q. And do you have an</p> <p>5 understanding that a packet concerning NOR</p> <p>6 liquidity and financing opportunities and</p> <p>7 strategic plan sensitivities was also</p> <p>8 provided to the board in preparation for</p> <p>9 the November meeting?</p> <p>10 A. I see the reference and their</p> <p>11 typically were board packets, but I don't</p> <p>12 know that I knew at that time the contents</p> <p>13 of the board packet.</p> <p>14 Q. We'll get to the meeting and</p> <p>15 talk about 27 in connection with the</p> <p>16 meeting.</p> <p>17 (Deposition Exhibit Number 28</p> <p>18 marked for identification.)</p> <p>19 BY MS. STEINGART:</p> <p>20 Q. What we've marked as Hanson 28</p> <p>21 which is a memo dated October 30th from</p> <p>22 Mr. Orme to the board of directors.</p> <p>23 A. (Reviews document.)</p> <p>24 Q. And the only thing I'm going to</p> <p>25 ask you about is the first paragraph under</p>
<p style="text-align: right;">Page 231</p> <p>1 (Deposition Exhibit Number 27</p> <p>2 marked for identification.)</p> <p>3 BY MS. STEINGART:</p> <p>4 Q. And also Hanson 27, which is a</p> <p>5 part of one of the attachments referenced</p> <p>6 in that October 16th memo.</p> <p>7 A. (Reviews document.)</p> <p>8 Q. My only question now is whether</p> <p>9 you recall seeing this cover, this e-mail</p> <p>10 dated October 16th and the operating plan</p> <p>11 and board summary that was -- that's noted</p> <p>12 in the first bullet?</p> <p>13 MR. KALECZYC: Object to form.</p> <p>14 THE WITNESS: I don't</p> <p>15 recall -- you say "this e-mail," are you</p> <p>16 referring to this memo.</p> <p>17 BY MS. STEINGART:</p> <p>18 Q. Yes.</p> <p>19 A. I don't recall seeing that and</p> <p>20 don't know whether or not this was</p> <p>21 circulated to people other than to board</p> <p>22 members. The reference plan summaries, I</p> <p>23 don't recall seeing them in advance but did</p> <p>24 attend that portion of the board meeting</p> <p>25 where myself and each of the other partner</p>	<p style="text-align: right;">Page 233</p> <p>1 2002 Forecast.</p> <p>2 A. (Reviews document.) Okay.</p> <p>3 Q. Do you recall having seen the</p> <p>4 October 30th memo?</p> <p>5 A. I don't, no.</p> <p>6 Q. Did you learn in or around that</p> <p>7 time, and that is at some point between</p> <p>8 October 30th and November 5th or 6th board</p> <p>9 meeting, that the current EPS forecast is</p> <p>10 now 1.99 as compared with 2.30 reflected in</p> <p>11 the prior submission?</p> <p>12 A. I recall at the meeting that</p> <p>13 we've not yet discussed that a plan, both</p> <p>14 operating and financial plan was presented</p> <p>15 and that segment of sessions, which we</p> <p>16 talked about, then myself and other partner</p> <p>17 member CEOs were asked to leave. But</p> <p>18 following that, Mr. Lewis and Mr. Hylland</p> <p>19 reported back that the board did not accept</p> <p>20 and approve a plan and directed the company</p> <p>21 management to go back and revise the plan</p> <p>22 because they felt there was too much risk</p> <p>23 contained in it. And we had a revised plan.</p> <p>24 I wouldn't recall specifically what that</p> <p>25 said, but this memo would indicate that the</p>

<p style="text-align: right;">Page 270</p> <p>1 directives tell you that nothing was 2 sacred? 3 A. I don't remember them saying 4 that, but they may have. 5 Q. Was that the understanding you 6 had in connection with the directives that 7 money was to be raised and nothing was 8 sacred? 9 MR. KALECZYC: Objection. 10 THE WITNESS: My understanding was 11 there were efforts under way to raise cash. 12 (Deposition Exhibit Number 30 13 marked for identification.) 14 BY MS. STEINGART: 15 Q. I'd like to show you what we've 16 marked as Hanson 30 and ask you if you 17 could describe what that is for the record? 18 A. (Reviews document.) The 19 document, albeit unsigned, is an asset and 20 stock transfer agreement dated November 15th 21 by and between NorthWestern Energy, LLC and 22 NorthWestern Corporation. This is the 23 agreement by which the utility assets and 24 liabilities were transferred from 25 NorthWestern Energy, LLC to NorthWestern</p>	<p style="text-align: right;">Page 272</p> <p>1 going-flat transaction? 2 A. Well, it is the third 3 supplemental indenture executed now by 4 NorthWestern Corporation and the Bank of 5 New York. 6 Q. And it was executed in or 7 around November 15th in connection with the 8 going-flat? 9 A. I believe it was, yes. 10 Q. And exhibit 32, do you 11 recognize that to be the officer's 12 certificate that was executed by you in 13 connection with the going-flat transaction? 14 A. (Reviews document.) It is an 15 officer's certificate executed by me in 16 connection with that transaction. 17 Q. Now, what did you do to satisfy 18 yourself with respect to paragraph 1 of the 19 officer's certificate that the transaction 20 complies with article 11 of the indenture 21 and all conditions precedent in the 22 indenture including any covenant compliance 23 which constitutes a condition precedent as 24 they relate to the transaction? 25 A. Well, same answer as the prior</p>
<p style="text-align: right;">Page 271</p> <p>1 Corp and other certain assets and 2 liabilities retained at NorthWestern Energy, 3 LLC, later named Clark Fork and Blackfoot, 4 LLC. 5 Q. So this is the agreement by 6 which the going-flat transaction was 7 effectuated? 8 A. I believe so. As I said, it's 9 an unsigned version, but that's what it 10 looks like. 11 Q. But there is one that's signed 12 and the transaction, in fact, occurred? 13 A. Yes. 14 MS. STEINGART: Just for the 15 record, if I can find a signed one, I will 16 make it an Exhibit 30-A. 17 (Deposition Exhibit Numbers 31 and 18 32 marked for identification.) 19 BY MS. STEINGART: 20 Q. I'd like to show you what we've 21 marked as Exhibit 31 and Exhibit 32. 22 A. (Reviews document.) 23 Q. Sir, do you recognize Hanson 31 24 to be the third supplemental indenture that 25 was executed in connection with the</p>	<p style="text-align: right;">Page 273</p> <p>1 one, I reviewed the documents referenced, 2 made inquiry of other management, to the 3 best of my recollection, Mr. Monaghan, and 4 conversations with counsel. 5 Q. And did they prepare any memos 6 for you that summarized or described the 7 assurances that they were providing you 8 with? 9 A. I don't recall if -- well, to 10 the best of my recollection, I don't think 11 they were internal management ones. I don't 12 recall if there were memos or a memo from 13 counsel or not. 14 Q. Looking at the earlier 15 paragraph, the sentence that begins "He has 16 read and is familiar with covenants and 17 conditions in the provisions in articles 18 11 and 12 of the indenture." 19 Did you rely on Mr. Monaghan 20 for that? 21 A. I read those articles at the 22 time, had some discussions with 23 Mr. Monaghan, perhaps others, but I remember 24 Mr. Monaghan and counsel. 25 Q. Then it says further down "And</p>

<p style="text-align: right;">Page 274</p> <p>1 has examined the various certificate and 2 instruments prepared in compliance with the 3 covenants and conditions."</p> <p>4 What certificates and 5 instruments did you review?</p> <p>6 A. I don't recall if there are any 7 or what they are.</p> <p>8 Q. What did you do to assure 9 yourself that NorthWestern was capable of 10 paying principal and interest in connection 11 with the QUIPS?</p> <p>12 MS. DELANEY: Objection. 13 THE WITNESS: I didn't make a 14 specific analysis of that. And as I said, 15 based upon my involvement in the company and 16 general understanding, I believe we had the -- 17 the corporation had the ability to make such 18 payments and did, in fact, do so over at least 19 some period of time. 20 BY MS. STEINGART: 21 Q. What documents or materials did 22 you base that belief on? 23 A. I can't point to a specific 24 list of documents. But we've discussed the 25 types of management reports and information</p>	<p style="text-align: right;">Page 276</p> <p>1 transferred and the liabilities assumed in 2 connection with the going-flat transaction 3 made the going-flat transaction a 4 fraudulent transfer?</p> <p>5 MR. KALECZYC: Objection. 6 MS. DELANEY: Objection. 7 THE WITNESS: I'm assuming that 8 you are not asking for the legal conclusion. 9 To go back, the assets and the liabilities are 10 on the books of the subsidiary, in this case, 11 NorthWestern Energy, LLC. The owner of the 12 assets and the liabilities, the difference 13 being equity, is NorthWestern Corporation. We 14 just looked at a directive from the board of 15 directors of NorthWestern Corporation saying 16 move those up with the exception of Milltown 17 Dam and some incidentals. They owned them 18 both. There was no change. They owned the 19 equity of it before the transaction. They 20 owned it after the transaction. So I just 21 dispute the premise that that type of fairness 22 opinion or assessment of those things was 23 necessary under the circumstances. 24 BY MS. STEINGART: 25 Q. When you signed the officer's</p>
<p style="text-align: right;">Page 275</p> <p>1 that have been provided to me during that 2 time period.</p> <p>3 Q. So you referred to the 4 management financial information reports in 5 reaching that conclusion?</p> <p>6 A. Not solely, but in part 7 Management information reports, 10-Ks and 8 10-Qs, presentations made to the board.</p> <p>9 Q. Did anyone prepare a fairness 10 opinion on behalf of Montana Power, LLC 11 that the going-flat transaction was fair 12 from a financial point of view to creditors 13 of Montana Power, LLC?</p> <p>14 A. To the best of my knowledge, 15 one was not required.</p> <p>16 Q. Did anyone prepare an 17 assessment for you of the value of the 18 assets being transferred and the 19 liabilities being assumed in connection 20 with the going-flat transaction?</p> <p>21 A. I don't recall any such 22 assessment nor do I think one was necessary.</p> <p>23 Q. Did anyone provide an 24 assessment for you about whether the 25 disparity in the value of the assets being</p>	<p style="text-align: right;">Page 277</p> <p>1 certificate that's Exhibit 32, were you 2 aware of the disparity in value of the 3 assets transferred and liabilities assumed 4 in connection with the going-flat 5 transaction?</p> <p>6 A. I don't believe there is any 7 such disparity.</p> <p>8 MS. DELANEY: Objection. 9 BY MS. STEINGART: 10 Q. What do you understand the 11 value of the assets transferred in the 12 going-flat transaction to be?</p> <p>13 A. It doesn't matter. The assets 14 were worth what they were, the liability was 15 worth what they were and the net result of 16 those was the responsibility of and the 17 property of NorthWestern before and after 18 the transaction.</p> <p>19 Q. Sir, at the time you executed 20 the officer's certificate, did you have an 21 understanding of the value of the assets 22 transferred and the liabilities assumed in 23 connection with the going-flat transaction?</p> <p>24 A. I would have had, in the normal 25 course of things, the balance sheet that you</p>

<p style="text-align: right;">Page 278</p> <p>1 are referring to of NorthWestern Energy, 2 LLC, had a general understanding. I did not 3 inquire at that time about what those 4 specific balances were.</p> <p>5 Q. Now, at the time of the 6 going-flat transaction, did counsel for 7 Montana Power, LLC indicate to you that you 8 should be aware of the value of the assets 9 being transferred as well as the 10 liabilities assumed in connection with the 11 going-flat transaction?</p> <p>12 MS. DELANEY: Objection. 13 MR. KALECZYC: Objection. 14 MS. DELANEY: To the extent this 15 calls for any privileged conversation with 16 counsel, I direct the witness not to answer. 17 BY MS. STEINGART: 18 Q. Who represented Montana Power, 19 LLC in connection with the going-flat 20 transaction? 21 A. I relied on advice from 22 Euclid Irving and Paul Hastings. 23 Q. Who represented NorthWestern in 24 connection with the going-flat transaction? 25 A. I don't know the answer to that</p>	<p style="text-align: right;">Page 280</p> <p>1 certificate -- or the materials that you 2 were relying on included the MFIRs and the 3 10-Ks and 10-Qs, was there anything else? 4 A. Yes. 5 Q. What else? 6 A. I cannot tell you. I used 7 those as examples. I had all the variety of 8 information provided to me in the normal 9 course of things available. 10 Q. And to the extent that those 11 documents that you've been able to identify 12 for me were false and misleading, then you 13 relied on false information in executing 14 the officer's certificate, correct? 15 MS. DELANEY: Objection. 16 MR. KALECZYC: Objection. 17 THE WITNESS: I have no basis for 18 believing that those documents were false or 19 misleading. 20 BY MS. STEINGART: 21 Q. Are you familiar with the 22 restatements that NorthWestern made of its 23 first three quarter 10-Qs for 2002 in 2003? 24 A. Generally, yes. 25 Q. Are you familiar with the cease</p>
<p style="text-align: right;">Page 279</p> <p>1 question. 2 Q. It's true -- well, you knew 3 that Paul Hastings was also representing 4 NorthWestern, correct? 5 A. I knew and recall that 6 Paul Hastings represented NorthWestern in a 7 variety of matters. 8 Q. Did you consider, as the 9 individual who executed the officer's 10 certificate, that it was not in the best 11 interest of the creditors of Montana Power, 12 LLC for Montana Power, LLC to have the same 13 counsel as NorthWestern in connection with 14 the going-flat? 15 MR. KALECZYC: Objection. 16 MS. DELANEY: Objection. 17 THE WITNESS: I did not. 18 BY MS. STEINGART: 19 Q. Did anyone talk to you about 20 that? 21 A. Not that I recall. 22 MR. KALECZYC: Objection. 23 BY MS. STEINGART: 24 Q. So you said that you had in 25 mind when you executed the officer's</p>	<p style="text-align: right;">Page 281</p> <p>1 and desist order that was entered against 2 NorthWestern by the SEC? 3 A. Generally. 4 Q. Are you familiar with the 5 complaints that have been filed against 6 Merle Lewis, Kipp Orme, Mr. Whitesel and 7 Mr. Hylland? 8 MR. KALECZYC: Object to the form. 9 BY MS. STEINGART: 10 Q. Are you familiar with the SEC 11 complaint that was filed against Mr. Lewis? 12 A. I'm aware that one was filed 13 from the news accounts and reports. 14 Q. And are you aware that he 15 entered into a consent decree? 16 A. I'm aware that there was a 17 fairly recent -- a news account indicating 18 that. 19 Q. And the same is true -- is the 20 same true with respect to your awareness of 21 Mr. Hylland having a complaint filed and 22 entering into a consent decree? Are you 23 aware of those two things? 24 A. I'm aware from the news 25 accounts. What I am saying is I have not</p>

<p style="text-align: center;">Page 282</p> <p>1 read those complaints or familiar with or 2 knowledge of what resolution was reached 3 other than as relates to those individuals 4 other than what has been reported in the 5 news accounts of the case.</p> <p>6 Q. Are you aware that Mr. Orme 7 took the 5th Amendment in response to 8 questions concerning the falsity of the 9 first, second and third quarter 10-Qs for 10 2002?</p> <p>11 MS. DELANEY: Objection. 12 THE WITNESS: Well, I don't know 13 in what context that may have happened. But 14 no, I'm not aware of that. 15 BY MS. STEINGART: 16 Q. It happened in the context of 17 this case, sir. Did no one inform you of 18 that? 19 A. To the best of my recollection, 20 I was informed that in response to a 21 question or line of questioning, that he had 22 taken the 5th Amendment. But the scope of 23 that, I don't know. And your question talks 24 about in relation to certain -- I wouldn't 25 know that, that context.</p>	<p style="text-align: center;">Page 284</p> <p>1 the many reports, all the information, the 2 public disclosures are just one of many. So I 3 cannot say that I relied specifically on those 4 and but for that would not have signed. I'm 5 just saying that was one of a body of 6 information that I had. And the collective 7 body of information, it did not -- I had no 8 reason at that time to believe there was any 9 problem with it or that the company was not 10 able to manage this transaction. 11 BY MS. STEINGART: 12 Q. But if it was false, if those 13 materials were false, then you relied on 14 false financials in signing the officer's 15 certificate, right? 16 A. I am aware that allegations 17 have been made, that aspects of those were 18 false, I have no independent understanding 19 or opinion of whether or not that is the 20 case. 21 Q. If they were false, then you 22 relied on false documents, correct? 23 MS. DELANEY: Objection. 24 MR. KALECZYC: Objection. 25 THE WITNESS: Accepting that your</p>
<p style="text-align: center;">Page 283</p> <p>1 Q. So based on all of the items 2 we've just discussed, is it still your 3 sworn testimony that you have no reason to 4 believe that the first, second and third 5 quarter 10-Qs when they were filed in 2002 6 were not false and misleading? 7 MR. KALECZYC: Objection. 8 MS. DELANEY: Now, or in 2002? 9 I object. 10 THE WITNESS: My testimony is that 11 upon signing these documents, I did not know 12 that nor did I have any basis to know or 13 believe that to be the case. 14 BY MS. STEINGART: 15 Q. To the extent that -- I'm 16 asking you now, to the extent that those 17 documents were false at the time you signed 18 this officer's certificate, to the extent 19 those documents were false and misleading, 20 in signing this officer's certificate you 21 relied on false and misleading material, 22 correct? 23 MS. DELANEY: Objection. 24 MR. KALECZYC: Objection. 25 THE WITNESS: In part. I had all</p>	<p style="text-align: center;">Page 285</p> <p>1 question is a hypothetical, "if they were." 2 Well, as I said before, in part, but I relied 3 on the body of information that I had 4 available to me. 5 BY MS. STEINGART: 6 Q. And in the body of information 7 that you had available to you, did you have 8 any information that evidenced to you in 9 2002 that those SEC files, 10-Ks and 10-Qs, 10 were false? 11 (Whereupon, the court reporter 12 read back the previous question.) 13 THE WITNESS: And you are asking 14 the question as of November 15, 2002 and the 15 answer is no. 16 MR. KALECZYC: Could we take a 17 break at this point? 18 MS. STEINGART: Yes. 19 (Recess.) 20 (Deposition Exhibit Number 33 21 marked for identification.) 22 BY MS. STEINGART: 23 Q. Sir, I'm handing you what we've 24 had marked as Hanson 33. And it's a memo 25 dated December 7th from Dick Hyland and</p>